

JOSE LEDESMA, PLAINTIFF AND APPELLEE, VS. SALVADOR V. DEL ROSARIO AND BENITA QUIOGUE DE DEL ROSARIO, DEFENDANTS AND APPELLANTS.*G. R. No 24589, March 25, 1926*

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-24589/>**STREET, J.:**

This action was instituted by Jose Ledesma in the Court of First Instance of the City of Manila for the purpose of foreclosing a mortgage executed by the defendants, Salvador V. del Rosario and Benita Quiogue de Del Rosario, on certain property located in the City of Manila and covered by Torrens titles, as indicated in the complaint. The property was originally mortgaged to Bernardino Jalandoni and Cesar Jalandoni for the purpose of securing a loan of P130,000 which appears to have been advanced by them to Benita Quiogue de Del Rosario but the Jalandonis transferred their credit and rights under the mortgage for a valuable consideration to Jose Ledesma, agreeing at the same time that they would answer to Ledesma for any unpaid balance due upon the mortgage debt after the foreclosure and failure of the mortgagors to pay said balance. Accordingly, in addition to the original mortgagors, the Jalandonis were named as codefendants in the complaint, with whom also are joined two defendants, Froilan Lopez and Chua Lua, who had levied attachments upon the mortgaged property; but these latter are nominal defendants and have not figured in the litigation.

Upon hearing the cause the trial judge found that the principal of the mortgage debt, in the amount of P130,000, was due and enforceable at the time of the institution of the action and that interest had accrued thereon at the rate of 12 per centum per annum from August, 1924, and would so continue to accrue until the indebtedness should be paid. He also declared that under a special stipulation in the mortgage P12,000 was due to the plaintiff as attorney's fees and costs; and he accordingly entered an order requiring the defendant Del Rosarios to pay all of said sums within ninety days, upon default in the payment of which the property should be sold for purposes of foreclosure according to the provisions of the Mortgage Law. He further required the defendant Del Rosarios to pay jointly and severally any balance of the indebtedness remaining unsatisfied from the foreclosure sale and adjudged that the two Jalandonis jointly and severally, but subsidiarily, should pay any balance that might still remain unpaid after the proceeds of the sale should have been applied and the Del Rosarios should have failed to satisfy said balance. From this judgment both the Del Rosarios and the Jalandonis appealed from the features of the decision severally unfavorable to them. The two appeals have been brought to this court in separate records, somewhat to the confusion of the issues involved in the respective contentions of the appellants; but the causes have been here heard together and will be disposed of in a single opinion.

The date fixed in the original contract of mortgage for the maturity of the mortgage debt was December 11, 1924, but the contract contained a provision to the effect that the interest should be paid in monthly installments, as due for each month, and that for failure on the part of the mortgagors to comply with any of their obligations under the contract of mortgage the creditors might treat the mortgage debt as due. It further appears that no interest was paid after August, 1923, for which reason the plaintiff elected to treat the whole debt as due and instituted this

foreclosure proceeding on November 8, 1924, a few weeks before the stipulated date of maturity. The only defense urged in behalf of the principal debtors, going to the whole right of action, is planted upon the claim that Benita Quiogue de Del Rosario had tendered the monthly interest as and when due but that the creditor had refused to accept it save upon the unreasonable condition that the debtors should pay the interest for an additional month, which was not then due. The trial court found that this contention was without sufficient basis in fact, and we see no reason to question the correctness of his finding. It results that there was no error on the part of the trial court in refusing to dismiss the case as premature or for any other reason; and judgment of foreclosure was properly entered in favor of the plaintiff.

The original mortgage contained a provision for the payment of 10 per centum of the principal and accrued interest to cover attorney's fees and court costs in case of default on the part of the mortgagors. Under this clause the trial court made an allowance of P12,000, and the mortgagors have assigned error on this point, claiming that the allowance is excessive. This court is of the opinion that the assignment is well taken; and in accordance with the ideas expressed in *E. C. McCullough & Co. vs. Veloso and Serna* (46 Phil., 1), the amount must be reduced. In view of the simplicity of the issues as well as other factors involved in the case, we are of the opinion that the sum of P6,500 will be adequate compensation for attorney's fees and costs.

The appeal of the Jalandonis, in so far as it is planted upon the grounds relied upon by the mortgagors, is likewise necessarily without merit; but the Jalandonis raise one point distinct from the defense interposed by the principal debtors, and this defense has relation to the action of the trial court in giving judgment against them jointly and severally, but subsidiarily, for any balance due after the application of the proceeds of the foreclosure sale and exhaustion of remedies against the principal debtors. In this connection it is insisted that the Jalandonis are mere guarantors and were not suable jointly with the-mortgage debtors. The clause of the contract (Exhibit A) by which the Jalandonis created the liability here involved reads as follows:

"That, in the remote event of the foreclosure of the mortgage for noncompliance on the part of the mortgage debtors with any of the conditions stipulated in the mortgage, and in the event that the mortgaged property shall have proven insufficient to cover the principal of one hundred and thirty thousand pesos (P130,000), Philippine currency, with accrued interest, and to satisfy the penal provision for ten per centum as attorney's fees, expenses and judicial costs, we bind ourselves jointly and severally, but subsidiarily, to answer to Sr. Jose Ledesma, his heirs and successors in interest, for the unpaid balance of any of these amounts, to the complete liquidation of the same."

We are of the opinion that this clause had the effect of impressing on the obligation of the Jalandonis every feature of a joint and several obligation except that it should be subsidiary. In other words by this provision they claim the benefit of the exhaustion of the property of the principal debtors. Under the judgment of the trial court this benefit was secured to them, and we think that this is all to which they are fairly entitled. That the Jalandonis were proper parties to this lawsuit is undeniable, and it is a well-known doctrine that courts of equity will not tolerate the bringing of a suit to settle only part of a controversy. To hold that the personal liability of the Jalandonis cannot be enforced in the same action in which the foreclosure is effected would make the ends of justice subordinate to a mere legal technicality,—something that should be avoided.

It results that the judgment appealed from will be modified by allowing P6,500 instead of P12,000 for attorney's fees and costs, and as thus modified the judgment is in all respects affirmed, without special pronouncement as to costs.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.